S.B.Civil Writ Petition No.6936/2007

Mohd. Ibrahim
vs
The Addl.Distict Judge, Parbatsar & Ors.

Date of order : 25.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Sanjeet Purohit, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the order of the trial court dated 12.4.2007 by which the petitioners'-plaintiffs' application filed under Order 6 Rule 17 CPC was dismissed by the trial court.

It appears that petitioners filed the suit claiming their right, title and interest in the query in question as successors of Fakir Mohd. They are claiming the share in the property alongwith the share of other parties.

According to learned counsel for the petitioner -pliantiffs during the pendency of the suit, some entries were made by the Mining Department in the name of defendants who are successors of Mohd. Rafiq

and, therefore the plaintiffs wanted to put this fact in pleading. It is submitted that the plaintiffs sought amendment in plaint at early stage but the trial court dismissed the petitioner-plaintiff's application.

It appears that the trial court dismissed the petitioners' application on the ground that petitioners' original case itself is that they have share in the property in question being successors of Fakir Mohd. The plaintiffs also pleaded that a query licnece was obtained by their brother Mohd. Rafiq for the mine no.173A on 1st Nov., 1988. The rights devolve on death of the original title holder as per the personal law of the parties and not dependent upon the certain entries made by revenue authorities or Mining authorities in their record. Therefore, in view of the above reasons, mere subsequent changes made by the defendants in their record, neither can affect the rights of the party which are not there. It may it be true that the stage in the suit may be early, but it is not necessary that each and every subsequent event to be recorded by amendment of the plaint so as to result into filing of the again written statement and retrial of the suit etc. Certain events can be taken note of by the courts which is provided under Order 7 Rule 7CPC. The court

can mould the relief even at the time of passing the decree. Therefore also, I do not find any reason to allow the petitioners to multiply the proceedings. No prejudice has been caused to the petitioners by refusing the amendment. Therefore also, I do not find any reason to interfere in the impugned order while exercising powers under Article 227 of the Constitution of India .

Hence, the writ petition of the petitioners is dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-